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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,118	09/25/2001	Eugene David Rodgers	9080/23611	9968

21888 7590 08/01/2005

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EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,118

Applicant(s)

RODGERS, EUGENE DAVID

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 18-21, 25-29 and 37-45 is/are pending in the application.
4a) Of the above claim(s) 37-45 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10, 18-21 and 25-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/8/05 has been entered.
2. Claims 1-10, 18-21, 25-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the transitional phrase "being comprised solely of" renders the scope of the claims indefinite because it is not clear if this is intended to be "closed" language, i.e., equivalent to "consisting of" or "open" language, i.e., equivalent to "comprising". Since the word "comprising" is used it will be considered as equivalent to "comprising" for purposes of examination.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1,4,6,18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-108,309 as set forth in paragraph 3 of the final rejection.
5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims 1, 4,6,18-21 above, and further in view of Ishino et al, U.S. Patent No. 4,515,850 as set forth in paragraph 4 of the final rejection.

6. Claims 3, 5, 7-9, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims above, and further in view of Miyaguchi, U.S. Patent NO. 5,882,292 as set forth in paragraph 5 of the final rejection.

7. Claims 10, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 in view of Miyaguchi as applied to claims above, and further in view of NL 83-1728 to Visscher as set forth in paragraph 6 of the final rejection.

8. It is noted that the status identifier "previously amended" is incorrect and should be "previously presented". Also, it is noted that claims 37-45 are still pending although they are withdrawn from consideration and should have been included with the listing of claims.

9. Applicant's arguments filed 2/8/05 have been fully considered but they are not persuasive. Applicant argues that JP '309 are sheath/core fibers wherein only the core comprises magnetic particles. However, the claims recite composite fibers which generally refers to bicomponent fibers, (i.e., sheath/core, side by side, etc.) which comprise magnetic particles. The claims do not recite additional structure as to exactly in what portion or portions of the fiber the particles are distributed. Therefore JP '309 discloses the same fibers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

A handwritten signature in black ink, appearing to read "Elizabeth M. Cole", is positioned above the printed name.

Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c